

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILFRED MCPHEARSON,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF
CORRECTION AND COMMUNITY SUPERVISION, et
al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/23/2020

7:17-CV-2531 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff Wilfred McPherson (“Plaintiff”), proceeding *pro se*, commenced this action on March 28, 2017, asserting claims pursuant to 42 U.S.C. § 1983 as against multiple named defendants. (*See* Complaint (“Compl.”), (ECF No. 1.)) By Order to Show Cause (“OSC”), dated March 10, 2020, the Court directed Plaintiff to show cause on or before March 27, 2020, why the action should not be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) (“Rule 41(b”)). To date, Plaintiff has not responded.

A review of the docket reveals Plaintiff has taken little action to prosecute his claims since the action was commenced in March 2017. Moreover, despite the passage of more than seven months, Plaintiff has failed to respond to the Court’s OSC. When determining whether to dismiss an action pursuant to Rule 41(b), courts have considered whether: (1) plaintiff’s failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff’s right to an opportunity for a day in court; and (5) the trial court adequately assessed the efficacy of lesser sanctions. *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004) (internal citations omitted). No one factor is determinative. *Id.* (citing *Peart v. City of New York*, 992 F.2d

458, 461 (2d Cir. 1993)). Having considered the relevant factors, the Court determines that dismissal of the action is warranted. Plaintiff's delays have been significant in duration and Plaintiff has failed to communicate with the Court since November 2018 (almost two years ago). Accordingly, it is hereby Ordered that the action is DISMISSED without prejudice for failure to prosecute.

The Clerk of the Court is respectfully directed to terminate the action and serve a copy of this Order upon the Plaintiff at his last known residence, and to show proof on the docket.

Dated: October 23, 2020
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge